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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/807,506   | 03/23/2004  | Kevin Jump           | JUM-101             | 3405             |
| 7590   | 07/20/2005  |                      | EXAMINER            |                  |
| John R. Benefiel<br>Suite 100 B<br>280 Daines Street<br>Birmingham, MI 48009 |             |                      | SZUMNY, JONATHON A  |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3632                |                  |

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                           |                  |
|------------------------------|---------------------------|------------------|
| <b>Office Action Summary</b> | Application No.           | Applicant(s)     |
|                              | 10/807,506                | JUMP, KEVIN      |
|                              | Examiner<br>Jon A. Szumny | Art Unit<br>3632 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 July 2005.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

This is the third office action for application number 10/807,506, Wall Hanging Adjustable Mount, filed on March 23, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Election/Restrictions*

Claims 11-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 7, 2005, but it is noted that such reply was actually treated as an election *without* traverse since the applicant did not point out supposed errors in the Examiner's restriction requirement.

*Claim Objections*

Claim 1 is objected to because of the following informalities:

In line 3, "adopted" should be --adapted--.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, lines 3-4, it is not understood what is meant by "a wall fastener...ad(a)pted to press said mounting against a wall surface or loose...".

Claim 1 recites the limitation "said mounting" in line 4 and "said wall" in line 11. There is insufficient antecedent basis for these limitations in the claims.

Regarding claim 7, it is not understood from the specification or the drawings exactly how the "annular surface" is different from the "annular space". Similarly, with respect to claim 9, it is not clear exactly how the peripheral groove is different from the annular space. Even though the Examiner brought such rejections up in the previous office action, it is noted that the applicant made no attempt to clarify such supposed differences.

Finally, regarding claim 8, it is just not clear exactly what is meant by "wherein said annular surface is stepped, being further out radially adjacent one set of teeth relative to the second set of teeth". Therefore, the Examiner will attempt to apply the art as best understood, but will not specify that any claims

not rejected under art would be allowable if the rejection under 35 U.S.C. 112-2<sup>nd</sup> paragraph are overcome since it is not even completely clear what the applicant is intending to claim.

*Claim Rejections - 35 USC § 102*

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S Patent number 2,384,478 to Lapeyre.

Lapeyre '478 discloses an adjustable mounting comprising a generally round mounting element (figure 6) having a perimeter, a wall fastener (42) passing through a hole in the mounting element that could inherently press the mounting element against a surface or could become loose to allow the mounting element to rotate on the fastener, an engagement feature (43) on the mounting element located eccentrically with respect to the hole, the mounting element rotatable about the fastener whereby the fastener can inherently be loosened to vertically shift a point of engagement of the feature with some wall hanging support to a desired height on the wall, and wherein the mounting element can inherently be held against a wall surface in the desired vertical position to be nonrotatable upon tightening of the fastener against the mounting element, wherein the mounting

element is a disc, wherein the engagement feature comprises the bottom of a peripheral annular space extending around the perimeter of the disc.

*Claim Rejections - 35 USC § 103*

Claims 3-7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent number 2,384,478 to Lapeyre in view of U.S. Patent number 1,871,615 to Jones.

Regarding claim 3, Lapeyre '478 teaches the previous invention failing to specifically divulge the fastener to be threaded, but does teach that the fastener doesn't necessarily need to be a nail (page 2, column 2, line 8). Jones '615 reveals an adjustable mounting (figure 3) including a generally round mounting element, a feature and a threaded wall fastener (12) passing through a hole in the mounting element. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the fastener of Lapeyre '478 to be threaded as in Jones '615 since it is well known that where two known alternatives are interchangeable for their desired function, an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious.

With respect to claims 4-7 and 9, Lapeyre '478 further fails to specifically teach the annular space to be defined by two series of teeth arranged about the perimeter lying on either side of the mounting element. However, Jones '165 teaches an annular space to be defined by a series of outwardly flared teeth (13) arranged about the perimeter of the mounting element. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mounting element of Lapeyre '478 so as to have a series of teeth arranged about the perimeter and lying on one side of the mounting element to provide for a more stable mounting by preventing rotation of the mounting element while the mounting element is being secured in place. Additionally, it would have been obvious to have duplicated the parts and provided another series of teeth on the other side of the annular space so as to conveniently allow either side of the mounting element to be mounted against a wall or other surface. Finally, the teeth in each series would inherently be "offset" from each other (one tooth is on one side, one is on the other side, thus, they are offset from each other); wherein there is some "annular surface" extending between each of the series of teeth hence defining the bottom of a annular space/groove, wherein the groove has

continuous flared sides extending about the perimeter of the disc forming the annular space.

Regarding claim 10, Lapeyre '478 further fails to specifically teach a counterbore at each end of the hole. Nevertheless, Jones '615 teaches the previously described mounting element wherein the hole for the fastener includes a counterbore (11). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hole of Lapeyre '478 so as to include a counterbore in order to conveniently hide the head of the fastener while preventing damage to an object utilizing the mounting element. Further, it would have been obvious to have duplicated the parts and provided a counterbore on the other end of the hole so as to conveniently allow either side of the mounting element to be mounted against a wall or other surface.

#### *Response to Arguments*

Applicant's arguments filed July 11, 2005 have been fully considered but they are not persuasive.

On page 5 of the response, the applicant contends that no relative shift of any point of the groove 43 of the disc of Lapeyre '478 would occur when the

mounting element is rotated about the fastener after the fastener is loosened.

The Examiner disagrees. When the fastener of Lapeyre '478 is loosened, such as, loosened so as to completely remove both the fastener and the disc from the wall, for instance, the disc can then be rotated and the vertical position of the disc and groove can be changed. Once a desired height has been obtained, the fastened can then be reinserted into the wall so as to render the disc nonrotatable against the wall.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.



Jon Szumny  
Primary Examiner  
Technology Center 3600  
Art Unit 3632  
July 17, 2005